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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,111	08/20/2003	Keith A. Sauerland	03093	6528
30114	7590	06/21/2006		
MERONI + MERONI P.O. BOX 309 BARRINGTON, IL 60011				
EXAMINER KAHELIN, MICHAEL WILLIAM				
ART UNIT			PAPER NUMBER	
3762				

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/644,111

Applicant(s)

SAUERLAND, KEITH A.

Examiner

Michael Kahelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 21-24 and 26-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 21-24 and 26-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The affidavit filed on 5/30/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the Brummel et al. (US 2005/0074130) reference.
2. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Brummel reference.

In general, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. MPEP 715.07

Although dated photographs of the outside of an apparatus are provided, these are not proof that the apparatus existed and worked for its intended purpose because the internal structure and processing have not been shown and no proof has been provided that the device functioned or produced data. As such, reduction to practice before the Brummel reference has not been established.

3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Brummel reference to either a constructive reduction to practice or an actual reduction to practice. The most recent cited activity in the affidavit filed under 37 CFR 1.131 is May 20, 2003. This amounts to a 3-month gap in diligence until the reduction to practice on August 20, 2003 (the application filing date). According to MPEP 2138.06, "An applicant must account for the entire period

during which diligence is required” and “a 2 day period lacking activity has been held to be fatal”.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21-26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brummel et al. (US 2005/0074130, hereinafter “Brummel”) in view of Boesen (US 6,852,084, hereinafter “Boesen”). Please note that Examiner has verified support for Brummel's entire disclosure in Appl. No. 60/477,276. Brummel discloses a fluid-tight housing (par. 0018), capable of being gripped by a gloved hand (inherently capable, for example if set on the palm of a gloved hand), having a stethoscope head in an opening (36 and par. 0025), a power source (par. 0026), a magnetic induction transmitter (par. 0030; RF telemetry is inherently magnetic induction because radio waves are electromagnetic), a fluid tight cover over all elements (par. 0018), a no slip grip ring (par. 0022), and a remote sound reproduction device (par. 0030). Examiner has interpreted claims 3, 7, 23, 30 and 34 as invoking 35 USC 112(6), wherein the means for coupling/attaching is a ring. Although Brummel discloses that the stethoscope head may be integral with the body interface surface (par. 0025), Brummel does not expressly disclose a separate fluid-tight member between the head and the housing, a

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momentary activation switch, or an indicator indicating power flow to the stethoscope head. In regards to a separate fluid-tight member, it is well known in the art of electronic devices to provide a gasket, grommet, or other fluid-tight member when passing elements through a housing to avoid the ingress of fluids or other matter that will compromise the function of the internal electronics. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Brummel's invention with a gasket, grommet, or other fluid-tight member between the sensor head and housing to avoid the ingress of fluids or other matter that will compromise the function of the internal electronics. In regards to the momentary activation switch and indicator for indicating power flow to the stethoscope head, Boesen teaches of providing a remote stethoscope with a momentary activation switch (16 and col. 3, line 54) to provide power to the device only when necessary, to prolong battery life and an indicator to indicate power flow to the stethoscope head (col. 3, line 62) to notify a user of the condition of the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brummel's invention by providing a momentary activation switch to provide power to the device only when necessary, to prolong battery life and an indicator to indicate power flow to the stethoscope head to notify a user of the condition of the device.

6. Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brummel in view of Kuo (US 6,836,680, hereinafter "Kuo"). Brummel discloses the essential features of the claimed invention, including an indicator for indicating operation

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(par. 0026), but does not disclose a relaying device comprising a microphone. Kuo teaches of providing a wireless relaying device with a means to sense both pulse signals and voice sounds to diagnose various maladies remotely (col. 2, line 40).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brummel's invention by providing a wireless relaying device with a means to sense both pulse signals and voice sounds to diagnose various maladies remotely.

7. Claims 27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brummel in view of Boesen as applied to claim 26 above, and further in view of Kuo. The modified invention of Brummel discloses the essential features of the claimed invention, including relaying voice and auscultatory sounds (Boesen, col. 6, line 44), but does not expressly disclose a microphone that transmits voice data from the patient device to the sound reproduction device. Kuo teaches of a microphone that transmits both pulse and voice data from the patient device to an external device to diagnose various maladies remotely. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Brummel's invention by providing a microphone that transmits both pulse and voice data from the patient device to an external device to diagnose various maladies remotely.

***Allowable Subject Matter***

8. Claims 1-8 are allowed.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

*MRH*  
6/15/06

*^ C*  
GEORGE R. EVANISKO  
PRIMARY EXAMINER

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